



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Robert T. Perez, M.D.
Decision and Order**

On September 28, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert T. Perez, M.D. (Registrant), of Santa Ana, California. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. BP4317740 on the ground that he does "not have authority to handle controlled substances in the State of California, the [S]tate in which [he] is registered with the DEA." Appendix (App.) 1 (Order to Show Cause) to Government's Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. §§ 823(f), 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Certificate of Registration No. BP4317740, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 1420 E. Edinger Ave., Suite 123, Santa Ana, California. *Id.* The Order also alleged that this registration does not expire until March 31, 2019. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on or about August 27, 2018, the Medical Board of California (MBC) issued "an Order On Noticed Petition For Order of Interim Suspension" (hereinafter "Interim Order") that "suspended" Registrant's "authority to prescribe and administer controlled substances in the State of California, the [S]tate in which [he] is registered with the DEA." *Id.* at 2. The Show Cause Order more specifically alleged that the Interim Order stated that Registrant "shall not '[p]ossess, order, purchase, receive, prescribe, furnish, administer, or otherwise distribute

controlled substances or dangerous drugs as defined by federal or state law.” *Id.* As a result, the Show Cause Order alleged that “DEA must revoke [his] registration . . . based upon [his] lack of authority to handle controlled substances in the State of California.” *Id.* (citing 21 U.S.C. § 824(a)(3)). *Id.*

The Show Cause Order notified Registrant of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2-3. (citing 21 CFR § 1301.43). The Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 3-4 (citing 21 U.S.C. § 824(c)(2)(C)).

With respect to service, a Diversion Investigator (DI) with DEA’s Los Angeles Field Division executed a Declaration on January 8, 2019 stating that she “learned that [Registrant] was incarcerated at Santa Ana Jail located in Santa Ana, CA.” App. 10 (Declaration of DI) to RFAA, at 1. As a result, the DI stated that on October 16, 2018, she “personally served a copy of the [Show Cause Order] on [Registrant] at the prison.” *Id.* The Declaration also attached DEA Form 12 Receipt for Cash or Other Items bearing “Registrant’s signature confirming his receipt” of the Show Cause Order on October 16, 2018. *Id.* at 2; Attachment A to App. 10, at 1.

On January 17, 2019, the Government forwarded its Request for Final Agency Action and evidentiary record to my Office. In its Request, the Government represents that more than 30 days have passed since Registrant had been served and that “DEA has not received a request for hearing or any other reply from him.” RFAA, at 5. Based on the Government’s representation and the record, I find that more than 30 days have passed since the Order to Show Cause was served on the Registrant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). Accordingly, I find that

Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government. *See id.* I make the following findings.

FINDINGS OF FACT

Registrant is the holder of DEA Certificate of Registration No. BP4317740, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of 1420 E. Edinger Ave., Suite 123, Santa Ana, California. App. 2 (Certification of Registration Status) to Govt. Mot., at 1. This registration does not expire until March 31, 2019. *Id.*

Registrant is also the holder of California Physician's and Surgeon's License No. G80178, which was issued to him in 1994 by the MBC. App. 8 to Govt. Mot., at 2. However, on August 27, 2018, an Administrative Law Judge of the MBC issued an Interim Order suspending Registrant's medical license after determining that, under California law, he was "mentally incompetent to practice medicine safely" and that "[p]ermitting [Registrant] to continue to engage in the unrestricted practice of medicine will endanger the public health, safety and welfare." *Id.* at 7-8.¹ Among other things, the Interim Order stated that, pending a full administrative determination, Registrant "shall not" "[p]ractice or attempt to practice any aspect of medicine in the State of California" or "[p]ossess, order, purchase, receive, prescribe, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law." *Id.* at 8. The Interim Order further directed Registrant to "immediately

¹ The California ALJ issued the Interim Order after considering the allegations set forth in multiple Accusations that the MBC's Executive Director filed with the MBC from 2015-2018 alleging that Registrant, *inter alia*, (1) engaged in dishonest acts toward a female patient; (2) failed to maintain adequate and accurate records; (3) engaged in unprofessional conduct; (4) engaged in sexual misconduct and unprofessional misconduct related to Registrant's romantic relationship with a female patient who subsequently became his wife; and (5) failed to participate in professional and ethical courses and to provide MBC-mandated quarterly declarations. App. 8 to RFAA, at 2-7; *see also* Apps. 3-7 to RFAA.

deliver to the [MBC], or its agent, . . . all indicia of his licensure as a physician and surgeon, . . . as well as all prescription forms, all prescription drugs not legally prescribed to [Registrant] . . . , all [DEA] Drug Order forms, and all [DEA] permits” “pending a final administrative order.” *Id.* at 9. There is no evidence in the record that the MBC ever issued a superseding order or decision ending the suspension of Registrant’s license.² In addition, I take official notice of the results of a search of the Board’s license verification web page showing that, as of the date of this Decision, Registrant’s California Physician’s and Surgeon’s License remains revoked. *See* <https://search.dca.ca.gov/results>.³

Accordingly, I find that Registrant currently does not possess a license to practice medicine in the State of California, the State in which he is registered with the DEA, and that the MBC has expressly prohibited Registrant from dispensing controlled substances in California. *See id.*; App. 8 to RFAA, at 8.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, DEA has long held that the possession of authority

² The record does show that on September 25, 2018, the MBC’s Executive Director filed a Third Amended Accusation against Registrant. *See* App. 9 to RFAA. The legal effect of this filing appears to be that it ensures that the Interim Order remains in effect until a decision is reached on the Third Amended Accusation. *See* RFAA, at 4 n.1 (citing Cal. Govt. Code § 11529(f)’s requirement that interim orders “shall be dissolved” within 30 days unless a subsequent accusation is filed).

³ Under the Administrative Procedure Act (APA), an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” U.S. Dept. of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA’s regulations, Registrant is “entitled on timely request to an opportunity to show to the contrary.” 5 U.S.C. § 556(e); *see also* 21 CFR 1316.59(e). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.").

This rule derives from the text of two provisions of the CSA. First, Congress defined "the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has long held that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR 27616 (1978).

Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. § 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the [S]tate," *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR

12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the MBC summarily suspended Registrant's state medical license.

What is consequential is my finding that Registrant is no longer currently authorized to dispense controlled substances in California, the State in which he is registered. Here, the MBC expressly precluded Registrant from prescribing controlled substances in California during the pendency of his suspension. App. 8 to RFAA, at 8. Furthermore, even if the MBC had not been so explicit, the MBC's suspension of Registrant's Physician's and Surgeon's License to practice medicine in California alone has the same legal effect. *See Christopher D. Owens, M.D.*, 83 FR 13143, 13145 & n.1 (2018) (citing Cal. Health & Safety Code §§ 11024, 11150, 11210, 11352, 2051, 2052). Accordingly, Registrant is not entitled to maintain his DEA registration, and I will therefore order that his registration be revoked.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BP4317740, issued to Robert T. Perez, M.D., be, and it hereby is, revoked. I further order that any pending application of Robert T. Perez to renew or modify the above registration, or any pending application of Robert T. Perez for any other DEA registration in the State of California, be, and it hereby is, denied. This Order is effective immediately.⁴

Dated: January 29, 2019.

Uttam Dhillon,
Acting Administrator.

⁴ For the same reasons which led the MBC to suspend Registrant's license and prescriptive authority, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

